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09/512,085	02/24/2000	Fredrica V. Coates	50014-042	5426
20277	7590	03/23/2004	EXAMINER	
MCDERMOTT WILL & EMERY 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096			REICHLER, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	22
DATE MAILED: 03/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/512,085

Applicant(s)

COATES, FREDRICA V.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-21 is/are pending in the application.
- 4a) Of the above claim(s) 5-9 and 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,10 and 17-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-19-03 has been entered. It is noted that the amendment did not comply with 37 CFR 1.121 because all the language added was not underlined and all the language deleted was not struck thru. As a courtesy to Applicant such was done by the Examiner in red ink.

### ***Election/Restrictions***

2. Claims 5-9 and 11-16 are still withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

From Applicants remarks, it is presumed that added claims 20-21 were deemed by Applicant to read on the elected species.

### ***Specification***

#### ***Drawings***

3. The drawings were received on 12-19-03. These drawings are not approved.

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The 12-19-03 replacement drawings still include lines, numbers and letters not uniformly thick and well defined, clean, durable and black (poor line quality) as noted on the PTO-948 attached to Paper No. 19. The drawing changes filed 12-19-03 with the replacement drawings as well as the drawing changes to Figures 1-1B filed 6-20-03 are approved by the Examiner. Therefore, the Examiner will not repeat the objections they overcome. Any remaining informalities not overcome by these approved proposed Figures are set forth in the next paragraph.

4. The drawings are objected to because the Figures are still not consistent with each other or the text as follows: Figure 1 would be in better form if amended to delete the line under 13. In Figure 2A, 62 should denote an elastic strip. In Figure 2E, 61B should be 71. In Figure 4, the line from 10 should be an arrow and the numerals 61B, 61A and 71A and lines therefrom deleted but a numeral 71 denoting the seam line as depicted in Figure 2 proposed 12-19-03 should be provided. The numeral 40 should also be deleted. In Figure 4A, 64C should be 62C. In Figure 4B, 61B should be 71. In Figure 6, the element 163' should be shown as overlock stitch. In Figure 6B, 162 and 163 should be 163' and 162'. In Figure 7, the line from 12A should be solid and in Figure 7B, the line from 13 should be dashed. This also applies to Figures 8 and 9. Also in Figure 9, button 114 should be denoted and the numeral 43 and the line therefrom should be deleted. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Description***

5. The disclosure is objected to because of the following informalities: The text is still not consistent throughout or with the Figures as follows: On page 3, lines 12-13 as originally filed would be in more accurate form if “and folding...structure” were deleted. On page 4, the amendment to line 1 filed 12-19-03, the added language on lines 1-2 thereof should be deleted. On page 4, line 16 as originally filed, “shown” should be --taken along line 3B-3B--. On page 6, the amendment to line 13 filed 9-30-02, line 9 thereof, “shell” should be deleted to be consistent. On page 7, the amendment to line 15 of 6-20-03, line 1 thereof, and page 8, the amendment to line 18 of 12-19-03, line 4 thereof, “Stitch line” should be --Seam line--. On page 8, the amendment to line 7 filed 12-19-03, lines 8-9 thereof should be rewritten as --take shape by folding the corners 21 at what would be edges 42A and then seaming, i.e. the corners 21 are not removed--. On page 9, the amendment to line 7 filed 6-20-03 would be in better form if on lines 5-6 thereof “The...end” were amended as --The fabric 72 at the ends of the rectangular pocketed sling are folded to form--, on lines 10-12 of that same amendment “edges...sealing”) were amended as --edges 61B and 71A are joined--and on lines 14-15 of that amendment “edge 71...61B” were amended as --edges 61B and 71A, which edges are joined--. On page 10, the amendment to line 6 filed 12-19-03, line 4 thereof, “at outer edge 80” should be deleted. On page 10, line 19 as originally filed, “61” should be --71--. On page 11, the amendment to line 2 filed 12-19-03, lines 4-5 thereof, “or alternatively” should be --and/or-- and on line 8 thereof, “and alternative” should be --and/or--. In the alternative, the descriptions of Figures 3C-3F should be amended to describe that the VELCRO or snap, respectively, fastener is not shown for clarity. In the amendment to page 11, line 2 filed 6-20-03, last line thereof, “61B” should be --

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71--. In the 5-15-01 amendment to page 13, line 9, on lines 6 and 7 thereof “162” should be --163--, and on line 9 thereof “409” should be --404--, and on line 10, after “pad”, --19-- should be inserted. In the amendment to page 13, line 18, filed 12-19-03, on lines 8 and 10, “40” should be --400A--, on lines 13-14 thereof, “overlock stitching” should be --seams 104 and-- and on line 15, “and... 162’ ” should be --and the outermost edges of the pocket are finished by overlock stitch 163’ and 162A--. In the 5-15-01 amendment to page 15, line 10, line 2 thereof should be rewritten --Elastic 40 holds the edges of the pocket and anchor cloth--. In the 12-19-03 amendment to page 13, line 18, the first line of the second to last paragraph thereof, after “embodiment”, --100-- should be inserted. In the 12-19-03 amendment to page 15, line 5, line 3 thereof, after “edge”, --of material-- should be inserted and “Side seams” should be --Seam lines--. On page 15, line 16 as originally filed, “seamed corners” should be --seams lines--. On page 16, line 16 as originally filed, “part” should be --the ends--.

Appropriate correction is required.

### ***Claim Objections***

6. Claim 21 is objected to because of the following informalities: on line 1, after “wherein”, --the inner layer is stitched to the anchor layer in lines and-- should be inserted.

Appropriate correction is required.

### ***Claim Language Interpretation***

7. Claim 1, lines 6-7 state the inner layer is stitched to the anchor layer but not to the outer layer. Since the inner layer is indirectly stitched to the outer layer via the anchor layer this

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claim language is interpreted to mean that the inner layer is not directly stitched to the outer layer and is directly or indirectly stitched to the anchor layer. Also, although on page 7, line 15 and page 9 line 1 Applicant discloses the stitching can be heat sealing, in light of Applicant's arguments bridging pages 18-19 of the 12-19-03 response that "stitched" as claimed is interpreted to requires penetration through the layer(s) which could possibly cause leakage of fluid, i.e. sewing by thread. Claim 1 requires an anchor layer having a shape conforming to that of the outer layer. See new claim 21 and Figures 1-1H of the instant application. This limitation is interpreted to mean that the anchor layer and outer layer are complementary in shape and size, i.e. coextensive.

***Claim Rejections - 35 USC § 102/103 or 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1-2, 10, 17-18 and 20-21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Brownlee et al '422.

See Figures 1 and 4-6 which show an diaper 10 having a body 12 of a fabric which is of two plies 12' and 12'' reverse stitched and a third ply 16 stitched to the upper of the two plies which forms a waterproof channel or pocket along with two discrete panels 22 which are not spaced inwardly from the ends of the body 12. See also Figures 7-8 which shows a preferred waterproof channel or pocket in which the panels 132 are monolithically formed rather than discrete and spaced inwardly of the ends of the body 12 rather than flush therewith. Col. 4, lines 52-55 set forth that Figures 7-8 illustrate a preferred manner of forming the water proof channel

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and attaching it to the fabric body 12 of the diaper, note again body 12 is described at col. 2, lines 25-36 as being two ply and having a third ply stitched to the inner ply. Figures 7-8 are described at col. 1, line 66-col. 2, line 3 as a partial view of the channel or pocket attached to the body of the diaper. Col. 4, lines 54-58, describe that the body is formed of a layer of the same fabric set forth in col. 2, lines 25-27 but do not disclose that such is the only layer, whether this layer is two plies, one ply or one ply of two plies, whether it has fasteners and leg elastics and how such are related thereto and give it a numeral 100 rather than 12'. Figure 8 shows the channel or pocket stitched to such layer. See also col. 4, line 59-col. 5, line 14. Therefore the Brownlee '422 patent clearly discloses an inner layer of fluid resistant material 108 which has all its sides 117, 118 and panels 132 attached to a layer, directly by stitching 127 and 129 and indirectly by welds 123, 125 and stitching 133, the sides being displaced inwardly, see Figure 7, from sides of the layer it is attached to and extending outwardly, i.e. upwardly, therefrom on the inner side of a diaper or garment to form a pocket which prevents leakage of body fluids, i.e. a protective undergarment, see the Figures again. With regard to claims 2 and 17-18, see portions cited above, i.e. base of claim 2 is 109, stitching 133 interconnects sides as claimed in claims 17 and 18. With regard to claim 21, the stitch lines 127 and 129 intersect the corners of the pocket, see Figure 7. It is noted that the specific number of stitch lines which intersect is not claimed. Claim 1 further requires the attached layer to be an anchor layer which is attached to an outer layer of fluid resistant material which layers are complementary in shape and size and the pocket, i.e. inner layer, not being directly stitched to the outer layer. Claim 20 further requires the anchor layer secured to the outer layer only at a peripheral edge of the outer layer. While it is the Examiner's first position based on col. 4, lines 52-55 and col. 2, lines 25-41, Figures 1 and 4-8



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that the waterproof channel of Figures 7-8 may be attached to the inner ply of the body 12 similar to that of the channel or pocket 8 of Figures 1 and 4-6 but having monolithically formed panels rather than discrete panels spaced inwardly of the ends of the body 12, due to the language of col. 4, lines 54-58, the use of the numeral 100 rather than 12' or 12'', Figures 7-8 and the description thereof in col. 1, line 66- col. 2, line 3 it is the Examiner's second position that even if Brownlee does not explicitly set forth such, that to employ the waterproof channel of Figures 7-8 with the body 12 and manner of securement of Figures 1 and 4-6, i.e. the channel connected to the inner ply 12' of the body which ply 12' is connected to the outer ply 12'' at the periphery thereof would be obvious to one of ordinary skill in the art in view of the recognition that such combination would provide a more aesthetically pleasing, garment like appearance with better leak prevention, i.e. the body 12 as shown in Figures 1 and 4-6 has finished elasticized edges and does not show the stitching of the pocket attachment at the exterior but provides less seams, e.g. between the panels 22 and ply 16, for potential leakage by monolithically formation of the pocket.

In regard to claim 10, this claim recites a product by process, i.e. defines the invention by how made, i.e. corners removed instead of, e.g., cutting the original material not to include corners in the first place. As set forth in MPEP 2113 the patentability of such claims are based on the product itself not the method of production. If the end product in the product by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. As best understood due to the breadth of the claimed process, i.e. doesn't set forth the size or orientation of the triangular portions or

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how the sides are joined, e.g. overlapping, abutting etc., the end product by the claimed process is the same as or obvious from the Brownlee device.

10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brownlee '422 in view of Coates '526 and Ohara GB '573.

Applicant now claims an entire perimeter of the pocket circumscribed by an elastic strip. Since Applicant has not provided a specific definition for the term "circumscribed" such will be given its broadest customary, i.e. dictionary, definition in light of the specification. The American Heritage Dictionary defines "circumscribe" as "To draw a line around, encircle.", "To confine within bounds; restrict.", " To determine the limits of; define.". Furthermore the strip of elastic 42 as seen in Figures 1-1H wrap the exposed edge from the inner surface to the outer surface of the pocket material as well as extend along the edge of the pocket along its entire perimeter. Therefore, as claimed, the definition of "circumscribed" as interpreted in light of the specification is broad enough to extending along the entire perimeter of the pocket defined by the edge only or in combination with wrapping the edge. The Brownlee device does not include such an elastic strip. The Brownlee device folds over a raw edge of a portion of the perimeter of the pocket and places elastic therein to provide a comfortable elastic edge. However, Coates '526, e.g. element 64 and col. 7, lines 40-42, and Ohara '573, element 10 and page 2, lines 36-40 also teach a comfortable elastic edge, partial or entire, but provide such by wrapping or "circumscribing" the raw edge with an elastic strip. To provide elastication along the entire perimeter of the pocket, as taught by Ohara, rather than just a portion thereof on the Brownlee device would be obvious to one of ordinary skill in the art in view of the recognition that such would optimize the benefits of the elastic, i.e. provide the benefits to the entire edge, i.e.

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optimize the fit of the pocket to the wearer, i.e. improve leakage prevention, and the desire of Brownlee to provide better fit. Additionally, to make the folded over elastic containing edge of Brownlee an edge circumscribed by an elastic strip as taught by Coates and Ohara instead would be obvious, see *In re Siebentritt* (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious), i.e. in the instant case both configurations provide a finished elastic edge.

### ***Response to Arguments***

11. Applicant's remarks with regard to the formal matters in the 12-03-03 response have been noted but are either deemed moot in that such issue has not been reraised or deemed not persuasive for the reasons set forth supra. Applicant's remarks of 12-19-03 with regard to the prior art rejections, specifically Brownlee and the embodiments shown in Figures 9-13, have been considered but are deemed not persuasive because such are narrower than the claim language and the teachings of the art as set forth in the rejections supra.


### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
March 17, 2004